

REMARKS

Claims 1, 2 and 5-8 are pending in the application.

Claims 1, 2 and 5-8 have been rejected.

No Claims have been amended, and reconsideration is respectfully requested in light of the following remarks and arguments.

I. REJECTIONS UNDER 35 U.S.C. § 103

Claims 1, 6 and 7 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Cohen (US Patent No. 7,299,349) in view of Aitken (US Patent No. 6,947,743) and Kopenen (US Patent Application Publication No. 2004/0235503).

Claim 2 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Cohen (US Patent 7,299,349) in view of Aitken (US Patent 6,947,743) and Kopenen (US Patent Application Publication 2004/0235503) and Boyle (US Patent 6,138,158).

Claim 5 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Cohen (US Patent 7,299,349) in view of Aitken (US Patent 6,947,743) and Kopenen (US Patent Application Publication 2004/0235503) and Vance (US Patent 7,043,264).

Claim 8 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Cohen (US Patent 7,299,349) in view of Aitken (US Patent 6,947,743) and Kopenen (US Patent Application Publication 2004/0235503) and Boyle (US Patent 6,947,743) and Vance (US Patent 7,043,264).

The rejections are respectfully traversed.

In *ex parte* examination of patent applications, the Patent Office bears the burden of establishing a *prima facie* case of obviousness. MPEP § 2142; *In re Fritch*, 972 F.2d 1260, 1262, 23 U.S.P.Q.2d 1780, 1783 (Fed. Cir. 1992). The initial burden of establishing a *prima facie* basis to deny patentability to a claimed invention is always upon the Patent Office. MPEP § 2142; *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Piasecki*, 745 F.2d 1468, 1472, 223 U.S.P.Q. 785, 788 (Fed. Cir. 1984). Only when a *prima facie* case of obviousness is established does the burden shift to the applicant to produce evidence of nonobviousness. MPEP §

2142; *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). If the Patent Office does not produce a *prima facie* case of unpatentability, then without more the applicant is entitled to grant of a patent. *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Grabiak*, 769 F.2d 729, 733, 226 U.S.P.Q. 870, 873 (Fed. Cir. 1985).

A *prima facie* case of obviousness is established when the teachings of the prior art itself suggest the claimed subject matter to a person of ordinary skill in the art. *In re Bell*, 991 F.2d 781, 783, 26 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1993). To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed invention and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. MPEP § 2142. In making a rejection, the examiner is expected to make the factual determinations set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 17, 148 USPQ 459, 467 (1966), viz., (1) the scope and content of the prior art; (2) the differences between the prior art and the claims at issue; and (3) the level of ordinary skill in the art. In addition to these factual determinations, the examiner must also provide "some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." (*In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir 2006) (cited with approval in *KSR Int'l v. Teleflex Inc.*, 127 S. Ct. 1727, 1741, 82 USPQ2d 1385, 1396 (2007))).

Applicant respectfully submits that pending Claims 1, 2 and 5-8 are patentable under 35 USC Section 103(a) over Koponen, Cohen, Aitken, Boyle and Vance for the following reasons.

In the method of Claim 1, the SMSC schedules the group of short messages using the transaction mode and delivers them to the mobile station, and **directly returns a delivery result to the PPG in a Submission Response Message** (see paragraph [0036] of the Description and Figure 3

of the present application) to notify whether the message has been sent to the receiving mobile station successfully or not. If all the short messages of the group obtained by segmenting the Push message are sent to the mobile station successfully, the SMSC returns an Acknowledgement Message (Submission Response Message) to the PPG to inform the PPG that the Push message has been sent to the **receiving mobile station successfully**. If any one of the short messages is sent to the mobile station unsuccessfully, the SMSC returns a Submission Failure Message (Submission Response Message) to the PPG to inform the PPG that the Push message has not been sent to the **receiving mobile station successfully**. Thus, the PPG receives the delivery result of the Push message through the Submission Response Message (either as an Acknowledgement Message or a Submission Failure Message), that is, whether or not the **receiving mobile station** has received the Push message successfully, and **there is no need for the PPG to make and submit a status report to the SMSC which then sends a Status Report Message back to the PPG** (see paragraphs [0032] and [0036] of the Description and Figure 3 of the present application).¹

As conceded in the Office Action, Cohen in view of Aitken fails to teach wherein if all the short messages of the group obtained by segmenting are sent successfully in a predetermined time, the SMSC returns an Acknowledgement Message to the PPG, and the PPG sends a Result Notify Message to the Push Initiator according to the Acknowledgment, and if any one of the short messages of the group obtained by segmenting is sent unsuccessfully in a predetermined time, the SMSC returns a Submission Failure Message to the PPG, and the PPG sends a Result Notify Message to the Push Initiator according to the Submission Failure Message. That is, Cohen in view of Aitken fails to disclose at least the technical features “**if all the short messages of the group obtained by segmenting are sent successfully in a predetermined time, the Short Message Service Center returns an Acknowledgement Message to the PPG**” and “**if any one of the short messages of the group obtained by segmenting is sent unsuccessfully in a predetermined time,**

¹ As stated in the response to the previous Office Action and mentioned in the background of the invention, in the prior art the SMSC not only sends a Submission Response Message to the PPG for each of short messages, but also feedbacks a Status Report Message to the PPG after the sending of all the short messages.

the Short Message Service Center returns a Submission Failure Message to the PPG” of the pending Claim 1.

The Office Action then asserts that newly cited Koponen discloses or teaches these distinguishing features/elements. After reviewing Koponen, the Applicant respectfully disagrees. Specifically, upon receiving a “submit” message from the service provider at step 401, the SMS-gateway sends an acknowledgement back to the service provider at 402; then the SMS-gateway processes the message at step 403, and sends the message to the SMSC at step 404; the SMSC may also send an acknowledgement to the SMS-gateway at step 406, which forwards the acknowledgement to the service provider at step 407, wherein the acknowledgement informs about a successful or an unsuccessful transmission of a message to the SMSC at step 404. Koponen, paragraph [0038]; Figure 4a. This acknowledgement is sent only if requested, at step 401.

It is apparent from the above-noted disclosure of Koponen, even if the SMSC can segment a long Push message from the SMS-gateway into multiple short messages, the SMS-gateway does not determine from the acknowledgement of Koponen, at step 406, whether **all the short messages have been successfully sent to the mobile station**, since this acknowledgement only informs about the successful or unsuccessful transmission of a message **to the SMSC**, and not about the successful or unsuccessful transmission of a message **to the mobile station**.

Another optional acknowledgement is a delivery status sent by the SMSC to the SMS-gateway, at step 409, which forwards it to the service provider, at step 410. Koponen, paragraph [0038]; Figure 4a. From this delivery status message, the service provider knows whether the **receiving mobile station** received the message. Koponen, paragraphs [0037], [0038]; Figure 4a. This optional delivery status sent from the mobile station via the SMSC to the SMS-gateway is needed to inform whether the mobile station received a message successfully. Koponen does not appear to explicitly describe that only a single acknowledgement message is transmitted from the SMSC to the service provider, as Koponen states that from the delivery status, the service provider “knows whether the mobile terminal received the message.” Koponen, paragraph [0038]. It is unclear, and appears possible, that the reference to “the message” refers to each SMS message within

a group of SMS messages; and therefore, Kopenen would appear to deliver multiple delivery status messages from the SMSC to the gateway, not a single acknowledgement message. Moreover, if these two optional acknowledgements are utilized, then the system of Kopenen would require two separate messages be sent from the SMSC to the gateway in order to verify the SMS message was received or not by the mobile terminal. In contrast, Applicant's technique utilizes the Submission Response Message from the SMSC (in response to a submission of a message by the PPG) alone to respond and notify the PPG of delivery status.

Based on this understanding, Kopenen does not appear to disclose the above distinguishing technical features of Claim 1. As stated in the response to the previous Office Action, Boyle and Vance also fail to disclose the above distinguishing technical features of Claim 1.

Accordingly, the Applicant respectfully requests withdrawal of the § 103(a) rejection of Claims 1, 2 and 5-8.

II. CONCLUSION

As a result of the foregoing, the Applicant asserts that the remaining Claims in the Application are in condition for allowance, and respectfully requests an early allowance of such Claims.

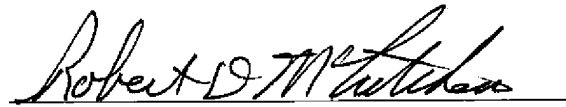
If any issues arise, or if the Examiner has any suggestions for expediting allowance of this Application, the Applicant respectfully invites the Examiner to contact the undersigned at the telephone number indicated below or at *rmccutcheon@munckcarter.com*.

The Commissioner is hereby authorized to charge any additional fees connected with this communication or credit any overpayment to Deposit Account No. 50-0208.

Respectfully submitted,

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